

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN PAIN
MANAGEMENT LLC,

Plaintiff,

Case No. 19-10409

v.

HON. GEORGE CARAM STEEH

ESURANCE PROPERTY
AND CASUALTY INSURANCE
COMPANY,

Defendant.

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS (DOC. 3)

Defendant Esurance Property and Casualty Insurance Company ("Esurance") has filed a motion to dismiss Plaintiff's complaint, to which Plaintiff has not responded. Plaintiff is a medical provider who seeks reimbursement for services provided to Demetrius Daniels under the No-Fault Act. Daniels was involved in an automobile accident on October 18, 2016. Plaintiff alleges that Daniels was insured by Esurance.

This is the third time Plaintiff has filed suit against Esurance seeking reimbursement for the same medical expenses. This court dismissed the

first action on August 29, 2017, because under *Covenant Med. Ctr. v. State Farm Mut. Auto. Ins. Co.*, 895 N.W.2d 490 (Mich. 2017), “a healthcare provider has no statutory right to bring suit against a No-Fault insurer for an injured person’s PIP benefits.” *Michigan Pain Mgmt. LLC v. Esurance Ins. Co.*, No. 17-10954, E.D. Mich., Doc. 9. The court dismissed the second action on July 5, 2018, finding that it was barred by res judicata. *Michigan Pain Mgmt. LLC v. Esurance Ins. Co.*, No. 18-10420, E.D. Mich., Doc. 12.

Esurance also seeks dismissal of this action based upon res judicata. Res judicata bars a subsequent action when the following elements are met: “(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privities; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.” *Howe v. City of Akron*, 801 F.3d 718, 742 (6th Cir. 2015). These elements are met here: this court dismissed two previous complaints brought by Plaintiff against Esurance on the merits, and each of the complaints sought No-Fault benefits as a result of the same auto accident involving Demetrius Daniels in 2016. Plaintiff’s third attempt to pursue these claims is barred by res judicata.

Accordingly, IT IS HEREBY ORDERED that Defendant's motion to dismiss (Doc. 3) is GRANTED and Plaintiff's complaint is DISMISSED WITH PREJUDICE.

Dated: May 30, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 30, 2019, by electronic and/or ordinary mail and also on Matthew Payne, Haas & Goldstein, PC, 31275 Northwestern Highway, Suite 225, Farmington Hills, MI 48334.

s/Barbara Radke
Deputy Clerk